

HCS SB 594 -- NO-CALL LIST AND UTILITIES

SPONSOR: Kraus (Pollock)

COMMITTEE ACTION: Voted "do pass" by the Committee on Utilities by a vote of 21 to 1.

This substitute changes the laws regarding the state's No-call List and utilities. In its main provisions, the substitute:

(1) Changes the laws regarding the state's No-call List to allow a residential subscriber to have his or her wireless telephone number added to the list. Currently, the definition of "residential subscriber" is a person who has subscribed to residential telephone service from a local exchange company or the other persons living or residing with the person. The substitute changes it to a person who, for primarily personal and familial use, has subscribed to residential telephone service, wireless service or similar service, or the other persons living or residing with the person. Currently, the definition of "telephone solicitation" is any voice communication over a telephone line from a live operator, through the use of ADAD equipment or by other means for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services, but does not include specified communications. The substitute changes it to any voice, facsimile, short messaging service (SMS), or multimedia messaging service (MMS) for that purpose;

(2) Allows an applicant for a salvage dealer license to list a wireless telephone number as the means for the public to contact the place of business;

(3) Requires a telecommunications carrier and certain commercial mobile service providers to provide, upon request, call location information concerning the user of a telecommunications service or a wireless communications service to a law enforcement official or agency in order to respond to a call for emergency service or to provide information in an emergency situation that involves danger of death or serious physical injury to any person where disclosure of communications relating to an emergency is required without delay. There will be no cause of action in any court against any telecommunications carrier or telecommunications service or commercial mobile service provider as well as any telecommunications service or wireless communications service or its officers, employees, agents, or other specified persons for providing any information, facilities, or assistance to a law enforcement official or agency. These provisions cannot prohibit a telecommunications carrier or commercial mobile service provider from establishing

protocols by which it can voluntarily disclose call location information; and

(4) Allows telecommunications and broadband service provider companies or rural electrical cooperatives to attach, maintain, and operate their equipment on another's pole in order to promote, encourage, and facilitate the deployment of electrical smart grid technologies, broadband communications, and similar advanced technologies in rural areas of the state under specified terms and conditions. Currently, pole attachment rules are enforced by the Federal Communications Commission (FCC). No attachment can be made without a written agreement between the pole owner and the attaching entity. The provisions of the substitute must be interpreted in a manner consistent with applicable FCC rules for pole and conduit attachments unless otherwise specified. The laws in effect prior to August 28, 2012, governing easements will continue to apply to cable companies that are not capable of providing broadband. The attaching party must give notice to a pole owner of the intent to attach and the specific location of the attachment, and the owner, unless otherwise agreed, must respond within 15 business days with specified exceptions. If proper notice is not given, the parties may determine a penalty or, if the parties cannot agree on a reasonable penalty for unauthorized attachments made after August 28, 2012, it must equal 25% of the pole attachment fee for a maximum period of 12 months. The attaching entity must pay for any damages and modification costs incurred by the pole owner to facilitate attachments, and the continued reliability and safety of the pole owner's system must have priority over the attachments. A pole owner must be entitled to a reasonable rate for permitting attachments that may be specified by contract, but the fee must not exceed reasonable costs to the pole owner's system as calculated in a manner similar to the FCC rules for pole and conduit attachments. Additional costs may be charged upon a showing of inefficiencies in its maintenance of its system caused solely by the attachments. An existing contract must remain in full force for its full term. The substitute specifies fee increase limitations for new contracts which may be enforced in circuit court and allows the use of non-binding mediation to resolve fee disputes. A pole owner may collect interest and penalties on the amount determined to be owed to him or her in court plus reasonable attorney fees but must give 45 days' notice prior to filing a collection action. A pole owner may allow an attachment under the scope of its existing property easement with the property owner if the attachment does not result in an additional unreasonable burden on the property owner or cause a diminution in value to the property owner's property. A property owner retains the right to file suit for diminution in fair market value of the property or the increased interference with the owner's use of the property, if any, caused by any new or

additional attachments to or the replacement of lines or equipment. However, evidence of revenues or profits derived by telecommunication providers or rural electrical cooperatives from providing these services is not admissible in any proceeding by the property owner to recover damages. A property owner may request to receive compensation from a rural electric cooperative for telecommunication and broadband use that is not allowed in an existing easement. The compensation must be at least \$100 per parcel and is to be calculated at the rate of \$500 per mile the line crosses the property and must meet specified circumstances and time limitations. The compensation provisions do not apply to cable companies and utilities that are not rural electric cooperatives. The provisions of Section 523.283, RSMo, must continue to govern and apply to all easements or right-of-way interests acquired after August 28, 2006, and these provisions cannot be construed to abrogate or conflict with the provisions of Chapter 523 or to confer the power of eminent domain on any entity not granted that power prior to August 28, 2012. A landowner is allowed to enter into an agreement with any other entity for use of the landowner's property if the agreement is subordinate to and does not conflict with the property rights and uses authorized in any easement or right-of-way interest previously granted. These provisions contain a nonseverability clause and if any provision of the substitute is held to be invalid for any reason, the remaining provisions will be invalid.

FISCAL NOTE: No impact on state funds in FY 2013, FY 2014, and FY 2015.

PROPOSERS: Supporters say that the bill will add faxes, text messaging, and other communications to the No-call List and make it easier to administer the list. It will help prevent solicitations to cell phones which can be expensive to the phone subscriber.

Testifying for the bill were Senator Kraus, Office of the Attorney General, and U.S. Cellular.

OPPOSERS: There was no opposition voiced to the committee.